



**[4910-13]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 65**

**Docket No. FAA-2014-1000; Amdt. No. 65-56A**

**RIN 2120-AK40**

**Elimination of the Air Traffic Control Tower Operator Certificate for Controllers Who Hold a Federal Aviation Administration Credential with a Tower Rating**

**AGENCY:** Federal Aviation Administration (FAA), DOT

**ACTION:** Final rule; disposition of comments

**SUMMARY:** On December 16, 2014, the FAA published a final rule with a request for comments that eliminated the requirement for an air traffic control tower operator to hold a control tower operator certificate if the individual also holds a Federal Aviation Administration Credential with a tower rating (FAA Credential). This action addresses the public comment the FAA received.

**DATES:** The final rule effective date remains February 17, 2015.

**ADDRESSES:** The docket may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket. The docket may also be accessed at the Docket Operations in Room W12-140 of the West Building Ground Floor, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Michele Cappelle, Air Traffic Safety Oversight Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-5205; email [Michele.cappelle@faa.gov](mailto:Michele.cappelle@faa.gov)

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## **SUPPLEMENTARY INFORMATION:**

### **Background**

On December 16, 2014, the FAA published a final rule that eliminated the requirement for an air traffic control tower operator to hold a control tower operator (CTO) certificate if the individual also holds an FAA Credential (79 FR 74607). The requirement to hold both the CTO certificate and the FAA Credential was redundant since the underlying requirements for the FAA Credential encompass those of the CTO certificate. The action will reduce the FAA's burden of administering redundant programs for those individuals who hold an FAA Credential.

### **Discussion of Comments**

The FAA received one comment from the National Air Traffic Controllers Association – AFL-CIO (NATCA). NATCA had several concerns with the rule.

NATCA opposes the elimination of the CTO certificate. NATCA believes that if the FAA eliminates the requirement for the CTO certificate, important training requirements risk elimination, which will result in a significant lack of appropriate oversight and create disparities between FAA and non-FAA tower Air Traffic Control Specialists.

The FAA notes the training requirements for air traffic controllers have not changed because of this rulemaking. All FAA air traffic controllers must adhere to the requirements in FAA Order JO 3120.4, *Air Traffic Technical Training*. The final rule simply eliminated duplicative programs that only applied to a portion of the FAA controller workforce. Before February 17, 2015 (the effective date of the final rule), air traffic controllers assigned to control towers were required to possess a CTO certificate issued in accordance with 14 Code of Federal Regulations (14 CFR) part 65, subpart B. CTO certificates were only required for air traffic controllers working in a control tower; no such requirement existed for air traffic controllers assigned to approach control or en-route air traffic control facilities. In addition, once a CTO certificate was issued, it remained valid with no recurrent or refresher training requirements to ensure the holder still possessed the skills demonstrated at the time the CTO certificate was awarded.

When the FAA Credentialing program was introduced in 2006, it included all FAA controllers, not just tower controllers as in the CTO program. In addition, the emphasis was shifted to ensuring safety-related personnel retained the skills necessary to perform their responsibilities. Under the FAA Credentialing program, the individual must: (1) complete all required training in accordance with FAA standards; (2) undergo required certification; and (3) successfully complete the initial skills evaluation to be issued an FAA Credential with an appropriate rating. Once issued, the rating associated with the FAA Credential is valid for 2 years, after which the individual undergoes another skills evaluation similar to the one used for the initial certification. The biennial skills evaluation is required for all air traffic controllers, regardless of their assignment to a tower, approach control, or en-route air traffic control facility.

NATCA is also concerned that the knowledge, skill, and experience requirements in part 65 for CTO certificate holders have not been properly incorporated into FAA Orders and that no analysis was performed.

During the rulemaking process, the FAA reviewed part 65, subpart B, and made appropriate changes to FAA Order 8000.90 upon issuance of the final rule. As noted in FAA Order 8000.90, the FAA Credentialing program incorporates the current training, certification, and qualification requirements that form the basis from which the Air Traffic Safety Oversight Service issues, amends, withdraws, and removes FAA Credentials. The Air Traffic Organization must adhere to the requirements in FAA Orders regarding the training, proficiency, and certification of personnel. These orders include FAA Order JO 3120.4, *Air Traffic Technical Training* and FAA Order JO 3000.57, *Air Traffic Organization Technical Operations Training and Personnel Certification Programs*. The Air Traffic Organization also must ensure that changes to FAA Orders JO 3120.4 and JO 3000.57 or other directives related to training, proficiency, and certification, are submitted for Air Traffic Safety Oversight Office (AOV) review and acceptance.

NATCA states that if “the requirements are eliminated for FAA credentialed Air Traffic Control Specialists, they need to be retained in another provision of Regulation or Statute to ensure proper oversight.” NATCA believes FAA Orders may be changed at-will and are not subject to the Administrative Procedure Act (APA). NATCA states there is no check and balance to oversee the FAA’s changes to these critical matters that are currently covered by regulation and subject to oversight.

FAA Orders serve as the primary means within the FAA to issue, establish, and describe agency policies, organization, responsibilities, methods, and procedures governing FAA employees.

FAA Order 1320.1 contains the requirements to issue Orders. Also, in 1997, the National Civil Aviation Review Commission (NCARC) recommended that the air traffic service provider in FAA be subject to the safety policies of a separate part of the FAA to provide independent safety oversight. In addition, in 2001, the International Civil Aviation Organization (ICAO) adopted an amendment requiring states to implement formal safety management procedures for their air traffic services systems.

FAA Order 1100.161 specifies the manner by which AOV, within the Office of the Associate Administrator for Aviation Safety (AVS), will oversee the Air Traffic Organization (ATO), and other organizations within the Federal Aviation Administration (FAA) regarding safety management of the air traffic system. AOV's safety oversight responsibilities remain the same whether certain Air Traffic requirements are contained in 14 CFR or in FAA Orders. Thus, there is no erosion of oversight of these important training and certification requirements.

NATCA notes that military and Department of Defense civilian controllers, as well as controllers working in Federal Contract Towers, are issued CTO certificates. NATCA states that these air traffic controllers, as well FAA air traffic controllers, regularly transfer between these employers. NATCA is concerned these transfers will be stifled or new bureaucracies will need to be created to ensure equivalent qualifications before transfer.

The underlying requirements for the FAA Credential encompass those of the CTO certificate. In addition, the FAA Credential includes the biennial skills evaluation discussed previously. Therefore, the FAA does not expect movement between employers to be stifled.

NATCA states that the FAA's final rule does not address how the FAA will maintain CTO certificates for incumbent employees for whom they will not be eliminated.

The procedures for current CTO certificate holders have not changed. Therefore, no additional changes were needed to 14 CFR part 65.

NATCA states that FAA should have collaborated with them on the development of any changes to the CTO certification process.

The FAA followed the procedures and requirements of the Administrative Procedure Act as well as those prescribed by FAA Order 1320.1.

Finally, NATCA requested that the FAA withdraw the rule and include FAA Credential holders in 14 CFR part 65. NATCA notes that under such an amendment, all certified controllers, whether holding a CTO certificate or an FAA Credential would be subject to the same rules, any subsequent rule changes would be subject to due process because they would require amendments to 14 CFR, and it would eliminate redundant processes.

The FAA followed the requirements in the Administrative Procedure Act and FAA Order 1320.1. Because FAA Orders serve as the primary means within the FAA to issue, establish, and describe agency policies, organization, responsibilities, methods, and procedures for FAA employees, the FAA has determined its actions are appropriate and have eliminated redundant processes.

## **Conclusion**

After consideration of the comment submitted in response to the final rule, the FAA has determined that no revisions to the rule are warranted.

Issued in Washington, DC on July 27, 2015.

Anthony S. Ferrante

Director, Air Traffic Safety Oversight Service

[FR Doc. 2015-19278 Filed: 8/5/2015 08:45 am; Publication Date: 8/6/2015]